

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES CRAIG ZANDER,

Defendant.

CV 17-123-GF-BMM

CR 13-081-GF-BMM

**NOTICE AND ORDER**

This case comes before the Court on Defendant Zander's "Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241," filed in this Court on November 6, 2017. Zander is a federal prisoner proceeding pro se.

As Zander was previously advised, *see* Order (Doc. 131) at 1-2, a challenge to the validity of a criminal judgment may not be brought in a habeas petition under 28 U.S.C. § 2241, *Marrero v. Ives*, 682 F.3d 1190, 1192 (9th Cir. 2012), or in a petition for a more unusual form of writ, *see Carrington v. United States*, 503 F.3d 888, 890-91 (9th Cir. 2007), *amended*, 530 F.3d 1183, 1184 (9th Cir. 2008); *Matus-Leva v. United States*, 287 F.3d 758, 761 (9th Cir. 2002); *United States v. Valdez-Pacheco*, 237 F.3d 1077, 1080 (9th Cir. 2001).

Zander states that he intends to show "jurisdictional and constitutional inadequacies of faults that render the Court's judgment a nullity." Pet. (Doc. 156)

at 2. Consequently, he must proceed under 28 U.S.C. § 2255. *See Stephens v. Herrera*, 464 F.3d 895, 897 (9th Cir. 2006).

The Court intends to recharacterize Zander's petition as a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. Once the petition is recharacterized as a § 2255 motion, any subsequent § 2255 motion will be subject to the restrictions on "second or successive" motions. *See Castro v. United States*, 540 U.S. 375, 383 (2003).

If Zander does not want the Court to consider his claims under § 2255 at this time, he must withdraw his petition. If Zander disagrees with the recharacterization, but wants the Court to consider his claims at this time, he may preserve the issue for appeal by simply stating, in response to this Order, that he objects to recharacterization.

Generally, a defendant may bring only one motion under § 2255. *See* 28 U.S.C. § 2255(h). Consequently, unless he withdraws his petition, Zander's response to this Order must set forth any additional § 2255 claims he believes that he has.

There is no fee for filing a motion under 28 U.S.C. § 2255. Zander's \$5.00 filing fee will be returned to him.

Accordingly, IT IS HEREBY ORDERED that Zander must respond to this Order on or before **December 8, 2017**.

IT IS FURTHER ORDERED that the clerk shall refund to Zander the \$5.00 filing fee he paid on November 6, 2017.

DATED this 16th day of November, 2017.

A handwritten signature in blue ink, reading "Brian Morris". The signature is written in a cursive style with a horizontal line underneath.

Brian Morris  
United States District Court Judge